

**Introduced by Senator Yee**

February 21, 2008

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An act to amend Sections 48907, 48950, and 66301 of the Education Code, relating to education.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1370, as introduced, Yee. Education: Journalism Teacher Protection Act.

(1) Existing law grants to public school pupils the right to exercise freedom of speech and of the press, as specified. Existing law also prohibits school districts operating one or more high schools and private secondary schools from making or enforcing a rule that subjects a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution and the California Constitution.

This bill would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting to protect a pupil's conduct authorized or protected pursuant to those provisions.

(2) Existing law prohibits the Regents of the University of California, the Trustees of the California State University, and the governing board of a community college district from making or enforcing a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution and the California Constitution.

This bill would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated

against for acting to protect a student's conduct protected pursuant to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 Journalism Teacher Protection Act.

3 SEC. 2. Section 48907 of the Education Code is amended to  
4 read:

5 48907. ~~Students~~—(a) *Pupils* of the public schools shall have  
6 the right to exercise freedom of speech and of the press including,  
7 but not limited to, the use of bulletin boards, the distribution of  
8 printed materials or petitions, the wearing of buttons, badges, and  
9 other insignia, and the right of expression in official publications,  
10 whether or not ~~such~~ *the* publications or other means of expression  
11 are supported financially by the school or by use of school  
12 facilities, except that expression shall be prohibited which is  
13 obscene, libelous, or slanderous. Also prohibited shall be material  
14 which so incites ~~students~~ *pupils* as to create a clear and present  
15 danger of the commission of unlawful acts on school premises or  
16 the violation of lawful school regulations, or the substantial  
17 disruption of the orderly operation of the school.

18 ~~Each~~

19 (b) *Each* governing board of a school district and each county  
20 board of education shall adopt rules and regulations in the form  
21 of a written publications code, which shall include reasonable  
22 provisions for the time, place, and manner of conducting such  
23 activities within its respective jurisdiction.

24 ~~Student~~

25 (c) *Pupil* editors of official school publications shall be  
26 responsible for assigning and editing the news, editorial, and  
27 feature content of their publications subject to the limitations of  
28 this section. However, it shall be the responsibility of a journalism  
29 adviser or advisers of ~~student~~ *pupil* publications within each school  
30 to supervise the production of the ~~student~~ *pupil* staff, to maintain  
31 professional standards of English and journalism, and to maintain  
32 the provisions of this section.

33 ~~There~~

1 (d) *There* shall be no prior restraint of material prepared for  
2 official school publications except insofar as it violates this section.  
3 School officials shall have the burden of showing justification  
4 without undue delay prior to ~~any~~ a limitation of ~~student~~ *pupil*  
5 expression under this section.

6 ~~“Official~~

7 (e) *“Official* school publications” refers to material produced  
8 by ~~students~~ *pupils* in the journalism, newspaper, yearbook, or  
9 writing classes and distributed to the student body either free or  
10 for a fee.

11 ~~Nothing~~

12 (f) *Nothing* in this section shall prohibit or prevent ~~any~~ *the*  
13 governing board of a school district from adopting otherwise valid  
14 rules and regulations relating to oral communication by ~~students~~  
15 *pupils* upon the premises of each school.

16 (g) *An employee shall not be dismissed, suspended, disciplined,*  
17 *reassigned, transferred, or otherwise retaliated against for acting*  
18 *to protect a pupil engaged in the conduct authorized under this*  
19 *section, or conduct that is protected by the First Amendment to*  
20 *the United States Constitution or Section 2 of Article I of the*  
21 *California Constitution.*

22 SEC. 3. Section 48950 of the Education Code is amended to  
23 read:

24 48950. (a) School districts operating one or more high schools  
25 and private secondary schools shall not make or enforce ~~any~~ *a* rule  
26 subjecting ~~any~~ *a* high school pupil to disciplinary sanctions solely  
27 on the basis of conduct that is speech or other communication that,  
28 when engaged in outside of the campus, is protected from  
29 governmental restriction by the First Amendment to the United  
30 States Constitution or Section 2 of Article ~~1~~ *I* of the California  
31 Constitution.

32 (b) ~~Any~~ *A* pupil *who is* enrolled in a school that has made or  
33 enforced ~~any~~ *a* rule in violation of subdivision (a) may commence  
34 a civil action to obtain appropriate injunctive and declaratory relief  
35 as determined by the court. Upon motion, a court may award  
36 attorney’s fees to a prevailing plaintiff in a civil action pursuant  
37 to this section.

38 (c) This section does not apply to ~~any~~ *a* private secondary school  
39 that is controlled by a religious organization, to the extent that the

1 application of this section would not be consistent with the religious  
2 tenets of the organization.

3 (d) Nothing in this section prohibits the imposition of discipline  
4 for harassment, threats, or intimidation, unless constitutionally  
5 protected.

6 (e) Nothing in this section shall be construed to supersede, or  
7 otherwise limit or modify, the provisions of Section 48907.

8 (f) The Legislature finds and declares that free speech rights  
9 are subject to reasonable time, place, and manner regulations.

10 (g) *An employee shall not be dismissed, suspended, disciplined,*  
11 *reassigned, transferred, or otherwise retaliated against for acting*  
12 *to protect a pupil engaged in conduct authorized under this section,*  
13 *or conduct that is protected by the First Amendment to the United*  
14 *States Constitution or Section 2 of Article I of the California*  
15 *Constitution.*

16 SEC. 4. Section 66301 of the Education Code is amended to  
17 read:

18 66301. (a) Neither the Regents of the University of California,  
19 the Trustees of the California State University, the governing board  
20 of ~~any~~ a community college district, nor ~~any~~ an administrator of  
21 any campus of those institutions, shall make or enforce ~~any~~ a rule  
22 subjecting ~~any~~ a student to disciplinary sanction solely on the basis  
23 of conduct that is speech or other communication that, when  
24 engaged in outside a campus of those institutions, is protected from  
25 governmental restriction by the First Amendment to the United  
26 States Constitution or Section 2 of Article ~~I~~ of the California  
27 Constitution.

28 (b) ~~Any~~ A student enrolled in an institution, as specified in  
29 subdivision (a), that has made or enforced ~~any~~ a rule in violation  
30 of subdivision (a) may commence a civil action to obtain  
31 appropriate injunctive and declaratory relief as determined by the  
32 court. Upon a motion, a court may award attorney's fees to a  
33 prevailing plaintiff in a civil action pursuant to this section.

34 (c) Nothing in this section shall be construed to authorize ~~any~~  
35 a prior restraint of student speech or the student press.

36 (d) Nothing in this section prohibits the imposition of discipline  
37 for harassment, threats, or intimidation, unless constitutionally  
38 protected.

39 (e) Nothing in this section prohibits an institution from adopting  
40 rules and regulations that are designed to prevent hate violence,

1 as defined in subdivision (a) of Section 4 of Chapter 1363 of the  
2 Statutes of 1992, from being directed at students in a manner that  
3 denies them their full participation in the educational process, if  
4 the rules and regulations conform to standards established by the  
5 First Amendment to the United States Constitution and Section 2  
6 of Article ~~I~~ I of the California Constitution for citizens generally.

7 *(f) An employee shall not be dismissed, suspended, disciplined,*  
8 *reassigned, transferred, or otherwise retaliated against for acting*  
9 *to protect a student engaged in conduct authorized under this*  
10 *section, or conduct that is protected by the First Amendment to*  
11 *the United States Constitution or Section 2 of Article I of the*  
12 *California Constitution.*